IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8397 of 1994

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIHARILAL MANGALDAS SHAH

Versus

STATE OF GUJARAT & OTHERS

Appearance:

1. Special Civil Application No. 8397 of 1994

MR RD RAVAL for the Petitioner
GOVERNMENT PLEADER for Respondents Nos. 1,3
M/S PATEL ADVOCATES for Respondent No. 1
RULE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 02/12/2004

ORAL JUDGEMENT

The petitioner, a retired Chief Engineer, challenges the action of the State Government in initiating disciplinary proceeding by issuing charge-sheet on 18th September, 1992.

Learned advocate Mr.Raval has appeared for the petitioner. He has submitted that the petitioner has, on reaching the age of superannuation, retired from service on 30th September, 1991. On his retirement from service the petitioner's relation with the State Government has been severed. The State Government has no right to initiate disciplinary proceeding after the petitioner has retired from service.

The disciplinary proceeding has been initiated against the petitioner by charge-sheet dated 18th September, 1992. The alleged acts of misconduct were committed by the petitioner during the period from 21st January, 1991 to 30th September, 1991 when he was working as Chief Engineer (Materials) in the Gujarat State Water Supply and Sewerage Board. Rule 189-A of the Bombay Civil Services Rules (hereinafter referred to as "the Rules") empowers the Governor, inter alia, to withhold or withdraw a pension or any part of it if in a departmental or judicial proceeding the pensioner is found guilty of grave misconduct or negligence during the period of his service. Clause (a) thereof provides that, "such departmental proceeding, if instituted while the Government servant was in service whether before his retirement or during his reemployment shall after the final retirement of the Government servant be deemed to be a proceeding under this rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the Government servant had continued in service:" Clause (b) thereof provides that, "such departmental proceeding if not instituted while the Government servant was in service, whether before his retirement or during his re-employment.--- (i) shall not be instituted save with the sanction of the Governor : (ii) shall not be in respect of any event which took place more than 4 years before such institution;"

Admittedly, the disciplinary proceeding in question has been initiated against the petitioner after he retired from service. The said proceeding, therefore,

shall be governed by clause (b) of the said Rule 189-A. The said clause (b) prohibits initiation of disciplinary proceeding against a Government servant after he retires from service for incidence which had occurred 4 years before the initiation of disciplinary proceeding. Hence, by implication, the Government has power to initiate disciplinary proceeding against its servant after such servant retires from service subject to the conditions mentioned in the aforesaid clause (b) of Rule 189-A of the Rules. In the present case, the petitioner is alleged to have committed the misconduct in question during the period from 21st January, 1991 to 30th September, 1991 when he was posted as Chief Engineer (Materials) in the Gujarat State Water Supply and Sewerage Board i.e. the incidence in question had taken place within less than 4 years before the date of initiation of the disciplinary proceeding (the issuance of the charge-sheet). Hence, embargo imposed under the said clause (b) shall not come into play.

If any disciplinary proceeding is initiated against a Government servant, whether while in service or after retirement from service, shall not be nipped in bud unless such proceeding is initiated without the authority of law or is vitiated by malafide or extraneous considerations. As discussed hereinabove, the impugned disciplinary proceeding cannot be said to be held without the authority of law. In absence of allegations of malafide the disciplinary proceeding initiated against the petitioner cannot be quashed merely because the petitioner has retired from service. The petitioner's objection to the initiation of disciplinary proceeding merely on the basis of his having retired from service is not sustainable.

In view of the above discussion, the petition is dismissed with cost. Rule is discharged. Ad-interim relief is vacated. The petitioner shall co-operate in early disposal of the disciplinary proceeding. The State Government shall complete the disciplinary proceeding as expeditiously as possible. The Registry shall send the writ forthwith.

(Ms. R.M.Doshit, J.)

/sakkaf